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In the Supreme Court of the United States

October Term, 1969

No. 585

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, ET AL.,

Petitioners,

vs.

SEABOARD COAST LINE RAILROAD COMPANY, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

September, 1969

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Supreme Court
of the
United States

October Term, 1969

No. _____

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, ET AL.,

Petitioners,

vs.

SEABOARD COAST LINE RAILROAD COMPANY, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners[1] pray that a writ of certiorari be granted

[1]Petitioners are the Brotherhood of Locomotive Firemen and Enginemen, a labor organization, and individual officers and members thereof: to-wit, T. L. McCollister, L. C. Hamilton, T. T. Jackson, Jr., Sidney Page, M. L. Williams, H. A. Stokes, and B. J. Poe.

Respondents are the Seaboard Coast Line Railroad Company, a Virginia corporation, and the Brotherhood of Locomotive Engineers, a labor organization.

This suit was instituted prior to the merger of the Brotherhood of Locomotive Firemen and Enginemen into the United Transportation Union on January 1, 1969, and pursuant to the terms of that merger, has continued to be prosecuted in the name of the Brotherhood of Locomotive Firemen and Enginemen.

to review the judgments of the United States Court of Appeals for the Fifth Circuit entered on June 4, 1969, in companion cases which involve identical or closely related questions and which were decided by the Court of Appeals in a single opinion rendered June 4, 1969. Pursuant to Rule 23(5) of the Rules of this Court, a single petition for writ of certiorari is filed for both cases in which the parties are identical.

Opinions Below

The opinion of the United States Court of Appeals for the Fifth Circuit, covering both cases, was rendered June 4, 1969, and has not yet been reported. It appears in Appendix A to this petition, App. 1 - App. 24, *infra.*

The Order Denying Motion for Intervention of the U.S. District Court for the Middle District of Florida, Jacksonville Division, in Case No. 68-41-Civ.-J, dated February 5, 1968, is not reported and appears in Appendix D hereto, pp. App. 29 - App. 30, *infra.* The U.S. District Court for the Southern District of Florida, Miami Division, did not render an opinion in Case No. 68-101-Civ.-JE, and its Final Judgment appears in Appendix E hereto, p. App. 31, *infra.*

Jurisdiction

The judgments of the Court of Appeals were entered on June 4, 1969 (Appendices B and C hereto, pp. App. 25 - App. 27, *infra*). By order of Mr. Justice Black, the time for filing this petition for a writ of certiorari was extended from September 2, 1969, to and including September 12, 1969. (See Appendix F, *infra.*) The jurisdiction of this Court is invoked under 28 U.S.C. §1254 (1).

Questions Presented

1. Does a federal District Court have jurisdiction of a claim by one union party to a tri-party collective bargaining contract entered into under the Railway Labor Act with the express auspices of the National Mediation Board for the purpose of solving a jurisdictional dispute, that the other two parties (the railroad carrier and the second union) have altered the tri-party contract in violation of the Railway Labor Act's mandatory procedures?

2. Where all parties to a tri-party labor agreement under the Railway Labor Act have agreed to renegotiate the agreement because the carrier party is merging with another railroad, and have agreed to arbitrate all disputes not resolved by such renegotiations, and have then commenced tri-party negotiations, but then two of the parties break off the tri-party negotiations and change the existing tri-party contract by bilateral agreement, which they then seek to enforce by federal District Court decree, does the federal District Court have jurisdiction of the excluded party's timely motion to intervene in the federal District Court case on the basis that the actions of the other two parties are in violation of the mandatory procedures and restrictions of the Railway Labor Act governing the alteration of existing labor agreements?

Statutes Involved

This case primarily involves the Railway Labor Act, 44 Stat. 577 (1926), as amended, 45 U.S.C., Sections 151 *et seq.*, and particularly Section 2 First (45 U.S.C., Section 152 First), Section 2 Second (45 U.S.C., Section 152 Second), Section 2 Seventh (45 U.S.C. §152 Seventh), and Section 6 (45 U.S.C., Section 156) of that Act which provisions are as follows:

Section 2 First: "It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

Section 2 Second: "All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

Section 2 Seventh: "No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act."

Section 6: "Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of

said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

Statement

The facts involved herein have a surface complexity, but are basically simple. Prior to July 1, 1967, there were two separate railroads, the ACL RR and the SAL RR.[2] On each railroad the craft of engineers was represented by the BLE; on each, the craft of firemen was represented by the BLF&E.

As this Court has had occasion to know from prior cases,[3] there is great mobility in the railroad industry

[2]The following abbreviations will be used in this petition, Atlantic Coast Line Railroad Company: *ACL RR;* Seaboard Air Line Railroad Company; *SAL RR;* Seaboard Coast Line Railroad Company: *SCL RR;* Brotherhood of Locomotive Firemen and Enginemen: *BLF&E;* and Brotherhood of Locomotive Engineers: *BLE.*

[3]*General Committee of Adjustment v. Missouri-Kansas-Texas RR.*, 320 U.S. 323 (1943); *General Committee of Adjustment v. Southern Pacific Co.*, 320 U.S. 338 (1943).

between the two crafts of engineer and firemen which, in turn, causes so-called jurisdictional disputes. So it was on the ACL RR, and following the teaching of this Court's decisions in the *General Committee* cases,[4] these jurisdictional disputes were referred to the National Mediation Board which solved them, quite logically, by persuading all parties involved (i.e., the ACL RR, the BLE, and the BLF&E) to enter into tri-party contracts concerning the subjects of over-lapping interest.[5] These tri-party contracts provided that none of the parties could withdraw from the contract without the consent of the other two parties or without formal notice by one party to each of the other two parties and further handling in conformity with the Railway Labor Act, 45 U.S.C., Sections 151 *et seq.*

On July 1, 1967, the ACL RR and the SAL RR merged.[6] In anticipation of the merger, the BLF&E and the BLE entered into so-called "protective agreements" with the ACL RR and the SAL RR. (See Record, Vol. I, pp. 89-122.) These "protective agreements" were separate bilateral contracts, but were virtually identical in terms. They provided that the Merged Company (SCL RR) would take over and assume *all* existing collective bargaining contracts; that the existing contracts would be merged into new agreements with the Merged Company covering all employees in each craft, with consolidation of seniority

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[4] *Ibid.*

[5] E.g., the method of returning engineers to the ranks of firemen or of calling demoted engineers from the ranks of firemen to serve as engineers when the engineers' extra board becomes exhausted.

[6] See *Florida East Coast Ry. v. United States,* 242 F. Supp. 14 (M.D.Fla. 1965), reversed, *Seaboard Air Line RR. v. United States,* 382 U.S. 154 (1965); *Florida East Coast Ry. v. United States,* 259 F. Supp. 993 (M.D. Fla. 1966), affirmed, 386 U.S. 544 (1967).

rosters and districts, *through negotiations;* and that all disputes arising out of the interpretation or application of the "protective agreements" would be subject to final and binding arbitration.

Following the execution of these "protective agreements" and the merger of the two railroads on July 1, 1967, the Merged Company (SCL RR) and the two unions here involved (BLF&E and BLE) began tri-party negotiations to make the new agreements called for by the protective agreements. After continuing for several months, however, the SCL RR and the BLE broke off the tri-party negotiations, bargained together on a bilateral basis, and entered into a bilateral contract between the SCL RR and the BLE which did not purport to continue the existing tri-party contracts and, in effect, excluded the BLF&E from the benefits and protections of those tri-party contracts. (See Petition by Intervenors in Jacksonville Case and Complaint in Miami Case, Record, Vol. I, pp. 74-88, Vol. II, pp. 8-31.)

Needless to say, the BLF&E did not consent to the breaking off of the tri-party negotiations, protested against the conduct of the SCL RR and the BLE, and requested that the SCL RR refrain from implementing its new bilateral contract with the BLE until further negotiations could be held.

The SCL RR and the BLE at first agreed to delay such implementation while the parties negotiated, and did so for about a week from January 16, 1968, to January 23, 1968. In the meantime, various individual members of both the BLF&E and the BLE had brought suits in various state courts in Georgia and South Carolina to restrain

implementation of the new SCL RR - BLE bilateral contract. Temporary restraining orders were issued in some of these cases, all of which were subsequently dissolved.

In this situation, the BLE on January 29, 1968, brought suit against the SCL RR in the U.S. District Court for the Middle District of Florida, Jacksonville Division, seeking to require the SCL RR mandatorily to implement the new, bilateral contract it had executed following termination of the tri-party negotiations. No notice of this suit was given to the BLF&E by either the plaintiff, BLE, or the defendant, SCL RR. The litigation at least savored of collusion since there was no real dispute between the parties; both wanted the same result, to-wit, an order requiring implementation of the new, bilateral contract they had negotiated after excluding the BLF&E.[7] They promptly obtained such an order in the form of a preliminary injunction (Record, Vol. I, pp. 71-72) issued on January 30, 1968, requiring SCL RR to implement the new bilateral contract immediately.

Meanwhile, without knowledge of the Jacksonville litigation, the BLF&E filed suit on January 30, 1968, in the U. S. District Court for the Southern District of Florida,

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[7]See Record, Vol. I, p. 64, e.g., where SCL RR's counsel told the District Court in Jacksonville at the hearing on BLE's application for a preliminary injunction: "So we stand here between the Devil and the deep blue sea; but we feel that we can't deny the validity of this Agreement, *and the rightness of the Plaintiff's cause.*" (Emphasis added.)

SCL RR did oppose being required to implement the new contract in South Carolina where it had been enjoined from doing so by a South Carolina state court, and the preliminary injunction of the U.S. District Court in Jacksonville accommodated the Railroad in this regard and provided that it would not be effective as to the Railroad's operations in South Carolina until and unless the South Carolina state court's injunction were dissolved (Record, Vol. I, p. 71).

Miami Division, naming both the SCL RR and the BLE as defendants and seeking to enjoin implementation of the very contract which, unbeknownst to the BLF&E, the District Court in Jacksonville had enjoined to be implemented. (Record, Vol. II, pp. 8 - 31). The BLF&E did not seek an ex parte hearing or hearing-on-short-notice in this case, and, of course, adequate notice of this suit was given by BLF&E to both respondents.

Upon learning of the Jacksonville litigation and the preliminary injunction therein rendered, the BLF&E promptly sought to intervene in that case on February 1, 1968 (Record, Vol. I, pp. 72 - 88). The motion to intervene, however, was denied on February 5, 1968, on the basis that the motion to intervene involved a jurisdictional dispute which was not within the jurisdiction of the Court (Record, Vol. I, pp. 204 - 206). BLF&E then appealed from this Order Denying Motion For Intervention (Record, Vol. I, p. 206).

Thereafter the Miami case came on for hearing on the BLF&E's application for a preliminary injunction and the defendants' motions to dismiss for (1) failure to state a claim upon which relief could be granted; (2) lack of jurisdiction; and (3) res judicata.[8] The Court granted the motion to dismiss with leave to amend (Record, Vol. II, p. 107); the BLF&E declined to amend (Record, Vol. II, p. 108 - 109); and the Court entered Final Judgment dismissing the complaint with prejudice on April 5, 1968 (Record, Vol. II, p. 110). Again, the BLF&E appealed (Record, Vol. II, p. 111).

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[8]The res judicata contention was based on the Order Denying Motion For Intervention of the U.S. District Court in Jacksonville.

By a split decision (Circuit Judge Thornberry dissenting), the U.S. Court of Appeals for the Fifth Circuit affirmed both judgments, holding that the entire dispute was "not one for judicial consideration." (Appendix A, *infra*, p. App. 12).[9]

Reasons for Granting The Writ

This case involves novel and important questions under the Railway Labor Act as to the effect of a railroad merger on existing collective bargaining contracts. The Courts below have held, in effect, that such a merger destroys the prior settlement of jurisdictional disputes, which disputes had been resolved by means of formal triparty contracts entered into under the auspices of the National Mediation Board. Such a holding brings the underlying jurisdictional disputes back to life with renewed vigor, and will necessarily be disruptive to peaceful and harmonious labor relations in the railroad industry. This result, petitioners respectfully submit, is both undersireable in its effects on interstate railroad commerce and in conflict with controlling decisions of this Court and with prior decisions of the federal Courts of Appeals. Because of the importance of harmonious labor relations in the railroad - airline industry to the Nation's economy, this Court should grant certiorari and review the divided decision below, which petitioners submit is erroneous for the following reasons:

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[9]Nevertheless, of course, the Order of the District Court in Jacksonville requiring the SCL RR to implement its bi-lateral contract with the BLE was left undisturbed and in effect.

A. *The decision below conflicts with decisions of this Court and prior decisions of the federal Courts of Appeals holding that federal District Courts have jurisdiction to enforce compliance with the procedures and prohibitions prescribed by the Railway Labor Act for changing collective bargaining agreements.*

As this Court recently said in *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 89 S. Ct. 1109, 1115 (1969):

> "The heart of the Railway Labor Act is the duty, imposed by §2 First upon management and labor, 'to exert every reasonable effort to make *and maintain* agreements concerning rates of pay, rules, and working conditions, and to settle all disputes ***.'" (Emphasis added.)

This basic duty is enforced by the restrictions and requirements of Section 2 Seventh (45 U.S.C. §152 Seventh) and Section 6 (45 U.S.C. §156) of the Act which require that changes in existing collective bargaining contracts in the railroad industry be accomplished only by formal notice on "the representatives of the parties interested in such intended changes" (emphasis added; Section 6 of Railway Labor Act, 45 U.S.C. §156), good faith bargaining thereafter, compulsory mediation by the National Mediation Board thereafter at its option or the option of any of the parties, the proffer of voluntary arbitrary by the National Mediation Board if all else fails, and finally the convocation of a National Emergency Board at the option of the President of the United States as a last resort. "While the dispute is working its way through these stages, neither party may unilaterally alter the *status quo*." *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co., supra*, 89 S. Ct. at 1115.

A majority of the Court of Appeals below held that the District Courts in this case had no jurisdiction to adjudicate petitioners' claim that the Merged Company (SCL RR) and BLE had violated their rights under the foregoing provisions of the Railway Labor Act[10] by breaking off tri-party negotiations concerning the renegotiation of tri-party contracts and thereafter, abrogating or changing those contracts by bilateral agreement between themselves. The asserted basis for this holding is that the underlying dispute is a so-called "jurisdictional" dispute within the exclusive jurisdiction of the National Mediation Board.

Petitioners respectfully submit that this holding completely misconstrues the situation before the Court and ignores ~~that~~ the fact that the so-called jurisdictional dispute between BLE and BLF&E had already been submitted to the National Mediation Board, and had been solved under the auspices of that Board by means of formal tri-party contracts. Upon creation of the tri-party contracts, the jurisdictional disputes ceased to exist. What remained were collective bargaining contracts which specifically provided that they could not be altered except by following the procedures of the Railway Labor Act, i.e., by giving notice to *all* parties and negotiating thereafter on a tri-party basis.

Respondents apparently at first recognized their legal obligations in this regard when the necessity to alter the tri-party contracts arose due to the merger of the ACL RR

[10]Petitioners' Complaint and Motion for Intervention particularly referred to Sections 2 Seventh, and Section 6 of the Railway Labor Act, 45 U.S.C., §§ 152 Seventh, and 156 (Record, Vol. I, p. 84; Vol. II, p. 27).

with the SAL RR. Thus, tri-party negotiations were commenced by the parties after the merger, but these continued for only a few months, when the respondents became impatient, broke off those negotiations, and entered into a bilateral agreement which altered and abrogated the tri-party agreements in ways deemed detrimental by the BLF&E. Thereafter the BLE sought and obtained the aid of the District Court in Jacksonville to put the new bilateral contract into immediate effect.

Petitioners suggest that, at the very least, it is clear that if the District Court in Jacksonville had jurisdiction to order the bilateral contract into effect, it had comparable jurisdiction to determine petitioners' claims that the contract was invalid for failure of the parties to follow the procedures of the Railway Labor Act.

What is involved here is the basic validity of tri-party contracts under the Railway Labor Act. Such contracts, it is true, are not the norm, but they have been used by the National Mediation Board most effectively to solve troublesome jurisdictional disputes in a peaceful, constructive manner. They are a very useful tool devised by the National Mediation Board to meet its responsibilities as described by this Court in the *General Committee* cases,[11] yet the decision of the Court of Appeals below undermines and severely limits their use for such purposes in the future. The effect on future industrial peace in the railroad industry can only be adverse.

Because the jurisdictional disputes between the BLE and BLF&E had been resolved by the tri-party contracts, petitioners submit that the Court of Appeals' majority

[11]Note 3, *supra*.

opinion's reliance on the *General Committee*[12] decisions of this Court is misplaced. Petitioners have no quarrel with those decisions, but say they have no application here where the question is not how to resolve a raw jurisdictional dispute as to which union represents which employees or which subjects overlapping two crafts are within the exclusive jurisdiction of which craft. Rather, the question here is how to renegotiate a tri-party contract where such renegotiation is necessitated by a merger of the carrier party. All parties involved (the SCL RR, the BLE and the BLF&E) had agreed to renegotiate them, and had agreed that disputes in renegotiating would be subject to final and binding arbitration (see protective agreements, Record, Vol. I, pp. 98 - 99, 114). Pursuant to this agreement, all parties commenced tri-party negotiations, but then, when the negotiations did not suit two of the parties, those two broke off and took action by themselves which — especially when buttressed by a federal court injunction — completely frustrated any resort to arbitration by the BLF&E.

The majority below admit that "***it well may be that the firemen are entitled to negotiate regarding subjects of the Engineers - Seaboard agreement, [but] the issue is not one for judicial consideration." (Slip opinion, p. 13; Appendix A, *infra*, p. App. 12). Nevertheless, the Engineers have been granted the aid of the Jacksonville District Court's *jurisdiction* and process (with SCL RR's acquiescence) to sanction their joint exclusion of BLF&E from the tri-party negotiations. This is hardly even-handed application of the law.

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[12]Note 3, *supra*.

Petitioners suggest instead, that the analysis in Judge Thornberry's dissenting opinion represents the correct interpretation of this Court's decisions concerning the jurisdiction of a federal court to enforce the mandatory procedures of the Railway Labor Act. Judicial enforcement of such procedures and prohibitions of the Railway Labor Act concerning the making of agreements (which would include, petitioners say, the renegotiating of agreements) has been recognized at least since 1937. *Virginian Ry. Co. v. System Federation No. 40*, 300 U.S. 515 (1937); *Brotherhood of Ry. & S.C., Etc. v. Florida E.C. Ry. Co.*, 384 U.S. 238 (1966); *McElroy v. Terminal Railroad Association of St. Louis*, 392 F.2d 966 (7 Cir. 1968), cert. den., 393 U.S. 1015 (1969); *Southern Ry. Co. v. Brotherhood of Locomotive Firemen and Enginemen*, 337 F.2d 127 (D.C. Cir. 1964); *Florida East Coast Ry. Co. v. Brotherhood of Railroad Trainmen*, 336 F.2d 172 (5 Cir. 1964), cert. den., 379 U.S. 990 (1965); *Manning v. American Airlines, Inc.*, 329 F.2d 32 (2 Cir. 1964), cert. den., 379 U.S. 817 (1964); *Order of Ry. Conductors and Brakemen v. Switchmen's Union of North America*, 269 F.2d 726 (5 Cir. 1959), cert. den., 361 U.S. 899 (1959); *Railroad Yardmasters of America v. Pennsylvania Ry. Co.*, 224 F.2d 226 (3 Cir. 1955).[13]

It is petitioners position, as it was dissenting Judge Thornberry's in the Court below, that the decision here involved is in conflict with each of the foregoing decisions. These conflicts should be resolved by this Court.

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[13]Most of these cases involve only traditional bilateral disputes between the Employer and a Union about changing collective bargaining contracts; however, *McElroy v. Terminal Railroad Association of St. Louis, supra*, and *Order of Ry. Conductors and Brakemen v. Switchmen's Union of North America, supra*, both involved tri-party disputes similar to the one at Bar.

B. *The decision below is in conflict with national labor policy, as expressed in the Railway Labor Act and decisions of this Court, favoring voluntary arbitration as a preferred method for settling labor disputes affecting inter-state commerce.*

The decision of the majority of the Court of Appeals below completely frustrates any possibility of settling the dispute here involved by voluntary arbitration, despite the fact that all three parties involved have formally agreed by contract to arbitrate all disputes arising out of the necessary renegotiation of the collective bargaining contracts occasioned by the merger of ACL RR and SAL RR into the SCL RR.

When the prospective merger made it apparent that existing contracts on the two merging railroad would have to be renegotiated, both the BLF&E and the BLE entered into "protective agreements" with the merging railroads whereby the railroads agreed that the Merged Company (SCL RR) would "take over and assume *all* contracts" between the merging carriers and their labor organizations (Record, Vol. I, pp. 96 - 97, 113). It was further agreed that these contracts would be merged into new agreements *through negotiations* (Record, Vol. I, pp. 96 - 97, 113), and that any dispute with respect to the interpretation or application of the protective agreements would be subject to final and binding arbitration (Record, Vol. I, pp. 98 - 99, 114).

It is true that the BLE protective agreement is a separate contract from the BLF&E's. But both are virtually identical in terms (compare Record, Vol. I, pp. 89 -

100 with Record, Vol. I, pp. 110 - 115). And both provide for voluntary arbitration of disputes concerning renegotiation of the existing contracts assumed by the Merged Company (SCL RR).

Accordingly, a reasonable, straight-forward method for solving this dispute was agreed upon by all three parties here involved prior to the existence of the dispute: tri-party arbitration. See and compare *Transportation-Communication Employees Union v. Union Pac. R. Co.*, 385 U.S. 157 (1966).

However, the action of SCL RR and the BLE in break-off tri-party negotiations, and entering into a bilateral contract that changed the substance of the existing tri-party contracts, obviously frustrated and rendered arbitration by the BLF&E alone impossible. Of course, up until the time the SCL RR actually implemented its new contract with BLE, there was still a possibility of resolving the dispute through negotiations that were continuing between BLF&E and SCL RR. For this reason, BLF&E requested both SCL RR and BLE to delay implementation of their new agreement beyond the date of January 16, 1968, when it was supposed to go into effect. At first, both SCL RR and BLE did agree to this request, and the implementation was delayed by them for a week from January 16th to January 23, 1968. BLE then refused to continue such delay and brought the instant suit in the U.S. District Court in Jacksonville, without notice to the BLF&E. That Court then granted a preliminary injunction within 24 hours requiring implementation of the new agreement (Record, Vol. I, pp. 71 - 72).

At this point, clearly, any possibility of settling the dispute by voluntary arbitration was completely frustrated. In the face of the District Court's decree, BLF&E could not hope to obtain relief by arbitration. Instead, it sought to intervene in the District Court litigation, as it obviously had to, but was rejected.[14]

Petitioners submit that the decisions below, frustrating voluntary arbitration of this dispute, are in conflict with prevailing national labor policy favoring voluntary arbitration as a preferred method of solving labor disputes affecting interstate commerce. The Railway Labor Act refers to voluntary arbitration throughout its text (45 U.S.C. §§152 First, 155 First (b), 155 Third, 157, 158, and 159). This Court has recognized that Congress has expressed a policy favoring settlement of labor disputes affecting interstate commerce by voluntary arbitration. *Textile Workers Union v. Lincoln Mills of Ala.*, 353 U.S. 448, 450-451 (1957); *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf N. Co.*, 363 U.S. 574, 578, 582 (1960); *United Steelworkers of America v.*

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[14]While BLE catagorically opposed BLF&E's intervention, SCL RR indicated somewhat hazily its favoring the BLF&E's being allowed to intervene (Record, Vol. I, pp. 179, 182):

"The Court: In other words, you are not taking the same position as B.L.E. with reference to the fact of intervention—

"Mr. Maness [SCL RR counsel]: That is correct. We—

"The Court: —you think it would accelerate the disposition of the case to have intervention?

"Mr. Maness: We think so."

and

"Mr. Maness: * * * You see, we take the position, even though we agreed to, or would like to see, the intervention of the Firemen's organization here, we still contend strongly that there is no merit to their position, and we're ready to go—."

Enterprise W. & C. Corp., 363 U.S. 593, 596 (1960); *Local 174, Teamsters, Etc. v. Lucas Flour Co.*, 369 U.S. 95, 105 (1962); *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 548-549 (1964).

Petitioners submit that the decision below, frustrating settlement of this dispute by voluntary arbitration, is in conflict with national labor policy as expressed in the Railway Labor Act and as stated in the foregoing decisions. At the very least, the District Court below in Jacksonville should have permitted intervention by the BLF&E and preserved the *status quo* pending tri-party arbitration. This Court should grant certiorari to review the application of national labor policy favoring voluntary arbitration to the situation here involved.

Conclusion

This case presents important issues concerning the jurisdiction of federal District Courts to compel enforcement of the procedures and restrictions of the Railway Labor Act governing the making and alteration of collective bargaining agreements. The agreements here involved are not mere bilateral contracts, but are tri-party agreements entered into under the auspices of the National Mediation Board to settle jurisdictional disputes. The importance of their stability, and the importance of the future availability of such contracts to settle jurisdictional disputes, is greater than that of the normal bilateral contract affecting only one union. The decision below, which undermines the stability and future use of such tri-party contracts, and which frustrates national labor policy favoring voluntary arbitration of labor disputes in the railroad industry, should be reviewed by this Court.

Respectfully submitted,

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and

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September, 1969

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition For Writ of Certiorari was served by air mail on JOHN WELDON, ESQ., and EDWARD A. CHARRON, ESQ., attorneys for respondent Seaboard Coast Line Railroad Company, 500 Water Street, Jacksonville, Florida 32202, and by regular mail on ALLAN MILLEDGE, ESQ., and RICHARD L. HORN, ESQ., attorneys for respondent Brotherhood of Locomotive Engineers, 1300 Northeast Airlines Bldg., 150 S.E. 2nd Ave., Miami, Fla. 33131, this 11th day of September, 1969.

Neal P. Rutledge